

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 18 CUTTACK, THURSDAY, JANUARY 2, 2025/PAUSA 12, 1946

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th December 2024

S.R.O. No. 4/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 11th December 2024 passed in the I.D. Case No. 10 of 2023 [under Section 2-A(2)] passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Management of M/s Khimji K. D. & Sons Pvt. Ltd., At Plot No. 621, Saheed Nagar, Janpath, Bhubaneswar-751007 and Shri Dusmanta Kumar Jena, S/o SyamSundar Jena, Plot No. 67/953, Road No. 5, Dibya Bihar, Samantarapur, Bhubaneswar-751002 is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 of 2023 [under Section 2-A(2)]

Dated the 11th December 2024

Present :

Shri Benudhar Patra, B.Sc., LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
M/s Khimji K. D. & Sons Pvt. Ltd.,
At Plot No. 621, Saheed Nagar,
Janpath, Bhubaneswar-751007.

.. First Party—Management

And

Shri Dusmanta Kumar Jena,
S/o SyamSundar Jena,
Plot No. 67/953, Road No. 5,
Dibya Bihar, Samantarapur,
Bhubaneswar-751002.

.. Second Party—Workman

Appearances :

Shri Trilochan Lenka, Advocate	. . For the First Party—Management
Shri Dusmanta Kumar Jena	. . For the Second Party Workman— himself

AWARD

The legality and justifiability of termination of service of the second party with effect from the 29th November 2021 is under challenge in the present application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the I.D. Act'). It is stated in the application that initially the second party raised a grievance before the DLO (Khurda), Bhubaneswar on the 16th January 2023 but as the matter could not be resolved by the labour machinery within the stipulated period of 45 days, he approached this Forum on the 6th March 2023 by filing the present application with a prayer for grant of compensation in lieu of his reinstatement and back wages owing to the fact that it would not be possible on his part to serve any more under the first party because of its running the business with the assistance of goons.

2. The case of the second party, in brief, is that he was appointed to work under the first party as Executive Senior Accountant with effect from the 8th October 2019 and during his continuance as such he was covered under the ESI/EPF Schemes and was being paid his monthly wages through bank account. It is stated that while working as such, a misappropriation of money was noticed under the Scheme -Dhanalaxmi Purchase Plan at Rourkela Branch, but the first party on the 29th November 2021 without having complete knowledge or proof of his involvement in the said misappropriation suddenly forced him to tender resignation and instructed him to ask for his full and final dues and out of fear when he complied with the instructions, the HR Manager of the first party terminated his employment on the same day. According to the second party, the termination of his service is in contravention of the provisions of the Act and so also in violation of the principles of natural justice, inasmuch as, despite his rendering continuous service for more than 240 days under the first party neither he was given one month's notice/notice pay in lieu thereof and compensation as required under the Act, nor such termination was preceded with any show cause/enquiry for any misconduct committed during his employment. It is asserted that as the first party is an 'industry' and he is a 'workman' within the purview of the Act, he raised a dispute concerning his termination of service before the DLO (Khurda), Bhubaneswar but the labour machinery having failed to resolve his grievance within the stipulated period, he preferred the present application under Section 2-A(2) of the Act before this Tribunal redressing his grievance. Stating to have not been gainfully employed elsewhere after his termination from service, the second party has prayed for a lump sum compensation in lieu of reinstatement and back wages; the reason being that now a days the first party has hired goons for running its business and in such a situation it is not possible for him to serve under it any more.

3. Resisting the claim laid on behalf of the second party, the first party filed its written statement. At the outset while challenging maintainability of the application under Section 2-A(2) of the Act, it is stated that there being no existence or apprehension of an 'industrial dispute' within the meaning of the Act, the Tribunal lacks jurisdiction to entertain the present application and further by virtue of appointment of the second party in a supervisory nature of duty with a monthly wages of Rs.15,000, he cannot be held to be a 'workman' within the meaning of Section 2(s) of the Act, so as to maintain the application in this Forum. As regards the background facts, the first party while admitting about appointment of the second party under its Corporate Office as Senior Executive

(Accounts) on a monthly wages of Rs.15,000 which subsequently raised up to Rs.17,000 per month, has asserted that he was employed in a supervisory capacity and was entrusted to look after the Dhanalaxmi Purchase Plan (DPP) of the company which was being implemented by officials of all the six branches/stores and thus was exercising managerial power. It is stated that during internal audit it came to the notice of the first party that a huge amount of money, i.e. to the tune of Rs. 8 lakhs under the head 'DPP' was misappropriated in Rourkela store of the company between the 1st April 2021 and the 21st November 2021 for which the first party lodged an FIR with the Plant Site Police Station bearing Case No. 509 of 2021 under Section 408/420/468/471 IPC, but as the second party was entrusted the duty to supervise the said DPP Scheme, an enquiry was also conducted against him to find out his involvement in the said misappropriation. It is stated that apprehending disciplinary action in the said enquiry, on the 29th November 2021 the second party submitted his resignation voluntarily and consequently as a mark of good gesture the management cleared up all his outstanding dues. Later on, it is stated, when the involvement of the second party in the above misappropriation came to floor, the first party filed a criminal case against him bearing I.C.C. Case No. 03 of 2023 under Section 408/420/468/471 of IPC in the Court of S.D.J.M., Panposh, Rourkela, which is now sub judice. In the premises, the first party has prayed to reject the claim as bad and invalid.

4. A rejoinder to the written statement is filed by the second party reiterating the stand taken in the claim statement and further asserting that the nature of duties assigned to the second party was purely manual/technical in nature and thus he is 'workman' within the meaning of the Act and further, his termination being in contravention of the provisions of the Act and the principles of natural justice, he is entitled to the relief(s) claimed in the present proceeding.

5. In view of the pleadings of the parties, the following issues have been framed for determination :—

ISSUES

- (i) Whether the case is maintainable ?
- (ii) Whether Shri Dusmanta Kumar Jena is a 'workman' as defined under Section 2(s) of the I.D. Act, 1947 ?
- (iii) Whether the second party has voluntarily resigned from service ?
- (iv) Whether the action of the management of M/s Khimji K.D. & Sons Pvt. Ltd., Plot No. 621, Saheed Nagar, Bhubaneswar, Dist. Khurda in terminating the services of Shri Dusmanta Kumar Jena, Ex-Executive Senior Accountant is legal and/or justified ?
- (v) If not, what relief Shri Jena is entitled to ?

6. In order to substantiate their respective stand, while the second party examined himself as WW 1 and relied on documents which have been marked as Exts. 1 to 9, the first party examined its D.G.M., Admin and Operation Shri Sitakanta Dash as MW 1 and placed reliance on Exts. A to E.

FINDINGS

7. *Issue Nos. (i) and (ii)*—As both the issues are framed touching maintainability of the application, for the sake of convenience they are taken up together for consideration. Although it is the consistent stand of the first party in its written statement that this Tribunal lacks jurisdiction to

entertain the present application under Section 2-A(2) of the Act; the same being not an 'industrial dispute' within the meaning of the Act and further the second party being engaged under first party as an Executive Senior Assistant was performing supervisory nature of duties and thus he is not a 'workman' within the meaning of the Act, yet the learned counsel representing the first party did not lay much emphasis on such aspects. However, as it reveals from Ext. 9, the second party raised his grievance before the District Labour Officer (Khurda), Bhubaneswar by way of a written complaint which was duly acknowledged by the office of DLO (Khurda), Bhubaneswar on the 16th January 2023 and despite all efforts when the labour machinery could not resolve his grievance, he approached this Forum by filing the present application under Section 2-A(2) of the Act on the 6th March 2023, i.e. much after the stipulated period. It is further ascertained from record that he has moved the present Forum within the prescribed period of three years of his alleged termination of service. The application of the second party being in consonance with the provisions of the Act, the same is held to be maintainable in this Forum.

8. Next, coming to the question as to whether the second party is a 'workman' or not within the meaning of Section 2(s) of the Act, it is found from the claim statement as well as evidence of the second party that, although the second party has taken a consistent stand that despite being designated as Executive Senior Accountant he was discharging manual/technical nature of job while in employment and therefore, he is squarely coming within the definition of 'workman'. The first party, on the other hand, has taken a stand that by virtue of his appointment as Executive Senior Assistant, the second party was entrusted supervisory nature of duties, i.e. to look after the work relating to DPP Scheme which was being implemented in its six stores located at different places, besides he was being paid more than the wages as has been prescribed under the Act and as such by no stretch of imagination he can be held to be a 'workman'.

9. In view of the rival stand taken by the parties, first I would like to refer to the statutory meaning of 'workman' as given in the Act.

Section 2(s): "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, sales promotion, operational, clerical or supervisory or any work for promotion of sales for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged - or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

- (i) who is subject to the Air Force Act, 1950 (45 of 1950); or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity ; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature".

The statutory meaning of 'workman' as in the Act came up for consideration before the Hon'ble Apex Court in the case of S.K. Maini Vrs. M/s Carona Sahu Company limited and Others (1994) 3 SCC 510 and. taking into consideration the legislative intention behind the definition of 'workman', it has been held by their Lordships that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. Further, the Hon'ble Apex Court in the case of Devinder Singh Vrs. Municipal Council, Sanaur, reported in (2011) 6 SCC 584 have held that the source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

10. Keeping in view the statutory meaning of 'workman' and the principle enunciated by the Hon'ble Supreme Court, now it is to be considered on the basis of available materials as to whether the second party is coming within the purview of 'workman' or not.

The second party in his rejoinder has stated that during his tenure of employment under the first party, his nature of work was to prepare different Scheme Accounts business and the same was not at all a supervisory nature of duty and the stand taken in that regard by the first party is nothing but to deprive him of the reliefs claimed in this application. The offer of appointment, Ext. 1 filed by the second party though reflects that he was assigned with the position of [Sr. Executive (Accounts) under the first party on a monthly remuneration of Rs. 15,000, yet nothing mentioned in Ext. 1 as to the nature of duties/responsibilities which the second party was required to perform while being employed as Sr. Executive (Accounts). Rather, it has come in evidence during cross-examination of MW 1 that the second party was dealing with accounts matter of nine branches of the first party through online. This evidence of MW 1 is clearly suggestive of the fact that by virtue of his appointment the second party was entrusted with technical nature of duties, i.e. to maintain accounts of the first party in relation to different schemes through online. In view of the specific stand of the second party that despite being assigned with the designation of Sr. Executive (Accounts), he was performing clerical/manual nature of duties, the management ought to have placed sufficient evidence on record showing the second party's supervision over other subordinate staffs of branch offices while performing duties in the Corporate Office and by reason of the powers vested in him, he was discharging managerial nature of duties. In absence of such evidence on record, it is difficult on the part of this Tribunal to oust the second party from the purview of 'workman' solely basing on the stand of the first party that he was designated as Sr. Executive (Accounts) and was drawing wages more than the one prescribed under the Act.

In view of the discussions held above, both the issues are answered in favour of the second party.

11. *Issue Nos. (iii) and (iv)*—Issue No. (iii) and Issue No. (iv) being inter-linked to each other are taken up simultaneously for consideration. While issue No. (iii) is framed taking into consideration the stand of the first party, Issue No. (iv) is framed to determine the legality and justifiability of termination of service, as alleged by the second party .

It is the stand of the first party as well as evidence of MW 1 that on account of a huge misappropriation found to have been committed in relation to the Dhanalaxmi Purchase Plan between the 1st April 2021 to the 21st November 2021, which was detected during the internal

audit, an FIR (Ext. A) was lodged against one Shri Rasmi Ranjan Patra, who was working as Junior Executive, Sales in the branch office of the first party at Rourkela and as the second party was looking after the supervision of the said scheme an enquiry was contemplated to ascertain his involvement therein. But, being apprehensive of disciplinary/legal action the second party submitted his resignation voluntarily on the 29th November 2021 and the management as a gesture of goodwill paid all his outstanding dues pursuant to such resignation. In view of the above, it is contended on behalf of the first party that the resignation dated the 29th November 2021 tendered by the second party being voluntary one, it cannot be said to be an act of termination of service of the second party, consequently the dispute laid in the present application being devoid of any merit be rejected as bad and invalid. *Per contra*, it is contended by the second party that although the second party had tendered resignation to the first party but such an attempt on his part was due to the rude behaviour of the authority and that too without there being any *iota* of evidence relating to the incident of misappropriation of money under the Dhanalaxmi Purchase Plan and as such the action of the first party is nothing but termination of his service. It is further contended that if at all the first party was in a mind to cause an enquiry to find out his involvement in the misappropriation, instead of proceeding against him departmentally it remained silent in the matter and did not even clear up his outstanding dues, which perforced him to ventilate his grievance before the labour machinery and ultimately before this Forum.

12. In the context, it is pertinent to refer to Ext. 5, the letter of resignation tendered by the second party. On perusal it reveals from Ext. 5 that alleging rude \behaviour by the Director of the first party, the second party had tendered his resignation on the 29th November 2021 with a prayer to the first party for issuance of NOC; his salary and bonus. When the letter of resignation contains some allegations against the Director of the first party, in my view, an enquiry into such resignation should have been conducted by the first party and result thereof should have been communicated to the second party either accepting his resignation or contemplating a disciplinary action for attributing such allegation against the Director of the first party. Instead as it reveals, the management taking a plea of good practice decided' to settle the dues of the second party. From the circumstances discussed above, an inference can be drawn that 'the first party was in a hurry to oust the second party from its employment without there having any sufficient cause for such removal. In this connection, it is pertinent to mention here that MW 1, who is the DGM, Admin and Operation while deposing for the first party has admitted in his cross-examination that the second party was not dealing with the Dhanalaxmi Purchase Plan at Rourkela; no explanation in writing was called for from the second party in connection with the alleged misappropriation at Rourkela Branch, nor any enquiry report is submitted before the Tribunal or served upon the second party. He even could not say the date of initiation or duration of such enquiry. Further, to substantiate its plea the first party seems to have exhibited' certain documents out of which Ext. A is the photocopy of FIR No.0509, dated the 30th December 2021 against .Shri Rasmi Ranjan Patra, Junior Executive, Sales of Rourkela Branch; Ext. B, the letter of resignation dated the 29th November 2021 regarding which discussions have already been made in the preceding paragraph ; Ext. C, report made to the IIC, Saheed Nagar Police Station, Bhubaneswar alleging gross negligence on the part of the second party; Ext.D, the photocopy of I.C.C. Case No.03 of 2023 filed in the Court of the learned SDJM, Panposh, Rourkela and Ext. E, the photocopy of letter addressed to the Assistant Labour Officer, Bhubaneswar pursuant to the complaint raised by the second party dated the 23rd February 2022. The above documentary evidence filed and proved on behalf of the first party could have lent support to the assertion of the first party had it initiated a disciplinary action against the second party in accordance with law. There being clear admission to the effect that not even an explanation

was called for from the second party with regard to the alleged misappropriation of money under the Dhanalaxmi Purchase Plan, this Tribunal finds it difficult to hold that it is a Case of voluntary resignation by the second party. Rather, the circumstances available in the case in hand suggests that it is a case of termination of the second party from service solely basing on surmises and conjecture. The misconduct, if any, alleged against the second party having not been enquired into by the first party in accordance with the industrial law and adhering to the principles of natural justice the plea of acceptance of his resignation in the above background cannot be said to be voluntary one, rather it is held to be a termination of service of the second party. That apart, if the case is to be viewed from other angle, it is seen that the second party had worked under the first party for a period of more than two years and thus was also entitled to the protection of Section 25-F of the Act and nothing is placed on record by the first party that at the time of relinquishing the second party from its employment it had complied with the provisions of Section 25-F of the Act. In any event, therefore, the action of the first party is not sustainable in the eye of law.

13. To sum up, it is held that it is not a case of voluntary resignation by the second party, rather for the assigned reasons it is held to be termination of his service.

The Issues are answered accordingly.

14. *Issue No. (v)*—Findings being arrived at on issue Nos. (iii) and (iv), now it is to be determined as to what relief the second party is entitled. In the context, after going through the mail correspondences made between the parties, marked Ext. 7 and the fact that relating to the misappropriation of money under the Dhanalaxmi Purchase Plan the first party has filed a complaint case (Ext. D) against the second party which is still sub judice before the SDJM, Panposh, Rourkela, the Tribunal is not inclined to pass an order of reinstatement and allow back wages in his favour, but owing to the suffering of the second party award of some monetary compensation is found to be an appropriate relief in the case. Accordingly, weighing all the available materials on record, the length of employment and the status of the second party and the fact that he is now aged about 42 years, this Tribunal is of the opinion that a monetary compensation of Rs. 1,00,000 (Rupees one lakh) only would be adequate to compensate the second party for his suffering. The first party is directed to implement the Award within a period of two months of the date of publication of its publication in the Official Gazette.

Dictated and corrected by me.

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 11156—LESI-IR-ID-0111/2024-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government